

H.R.1204

Community Pharmacy Fairness Act of 2009 (Introduced in House)
HR 1204 IH

111th CONGRESS
1st Session
H. R. 1204

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of independent pharmacies and health plans and health insurance issuers (including health plans under parts C and D of the Medicare Program) in the same manner as such laws apply to protected activities under the National Labor Relations Act.

IN THE HOUSE OF REPRESENTATIVES

February 25, 2009

Mr. WEINER (for himself, Mr. ADERHOLT, Ms. BALDWIN, Mr. BARTLETT, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mr. BOUSTANY, Ms. CLARKE, Mr. COBLE, Mr. CONYERS, Mr. COURTNEY, Mr. CUMMINGS, Mr. FARR, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLDEN, Mr. JONES, Mr. LOEBSACK, Mr. MCHUGH, Mr. MOORE of Kansas, Mr. MORAN of Kansas, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. NADLER of New York, Mr. PAUL, Mr. ROE of Tennessee, Ms. LINDA T. SANCHEZ of California, Mr. TERRY, Mr. WELCH, Mr. WILSON of Ohio, Mr. HALL of Texas, Mr. DRIEHAUS, Mr. PLATTS, and Mr. TAYLOR) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of independent pharmacies and health plans and health insurance issuers (including health plans under parts C and D of the Medicare Program) in the same manner as such laws apply to protected activities under the National Labor Relations Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Community Pharmacy Fairness Act of 2009'.

SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO INDEPENDENT PHARMACIES
NEGOTIATING WITH HEALTH PLANS.

(a) In General- Any independent pharmacies who are engaged in negotiations with a health plan regarding the terms of any contract under which the pharmacies provide health care items

or services for which benefits are provided under such plan shall, in connection with such negotiations, be entitled to the same treatment under the antitrust laws as the treatment to which bargaining units which are recognized under the National Labor Relations Act are entitled in connection with activities described in section 7 of such Act. Such a pharmacy shall, only in connection with such negotiations, be treated as an employee engaged in concerted activities and shall not be regarded as having the status of an employer, independent contractor, managerial employee, or supervisor.

(b) Protection for Good Faith Actions- Actions taken in good faith reliance on subsection (a) shall not be the subject under the antitrust laws of criminal sanctions nor of any civil damages, fees, or penalties beyond actual damages incurred.

(c) No Change in National Labor Relations Act- This section applies only to independent pharmacies excluded from the National Labor Relations Act. Nothing in this section shall be construed as changing or amending any provision of the National Labor Relations Act, or as affecting the status of any group of persons under that Act.

(d) Effective Date- The exemption provided in subsection (a) shall apply to conduct occurring beginning on the date of the enactment of this Act.

(e) Limitations on Exemption- Nothing in this section shall exempt from the application of the antitrust laws any agreement or otherwise unlawful conspiracy that--

(1) would have the effect of boycotting any independent pharmacy or group of independent pharmacies, or would exclude, limit the participation or reimbursement of, or otherwise limit the scope of services to be provided by, any independent pharmacy or group of independent pharmacies with respect to the performance of services that are within the scope of practice as defined or permitted by relevant law or regulation;

(2) allocates a market among competitors;

(3) unlawfully ties the sale or purchase of one product or service to the sale or purchase of another product or service; or

(4) monopolizes or attempts to monopolize a market.

(f) Limitation Based on Market Share of Group- This section shall not apply with respect to the negotiations of any group of independent pharmacies with a health plan regarding the terms of any contract under which such pharmacies provide health care items or services for which benefits are provided under such plan in a PDP region (as defined in subsection (j)(4)) if the number of pharmacy licenses of such pharmacies within such group in such region exceeds 25 percent of the total number of pharmacy licenses issued to all retail pharmacies (including both independent and other pharmacies) in such region.

(g) No Effect on Title VI of Civil Rights Act of 1964- Nothing in this section shall be construed to affect the application of title VI of the Civil Rights Act of 1964.

(h) No Application to Specified Federal Programs- Nothing in this section shall apply to negotiations between independent pharmacies and health plans pertaining to benefits provided under any of the following:

(1) The Medicaid Program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) The State Children's Health Insurance Program (SHIP) under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(3) Chapter 55 of title 10, United States Code (relating to medical and dental care for members of the uniformed services).

(4) Chapter 17 of title 38, United States Code (relating to Veterans' medical care).

(5) Chapter 89 of title 5, United States Code (relating to the Federal employees' health benefits).

program).

(6) The Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(i) Definitions- For purposes of this section:

(1) ANTITRUST LAWS- The term `antitrust laws'--

(A) has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) HEALTH PLAN AND RELATED TERMS-

(A) IN GENERAL- The term `health plan'--

(i) means a group health plan or a health insurance issuer that is offering health insurance coverage;

(ii) includes any entity that contracts with such a plan or issuer for the administering of services under the plan or coverage; and

(iii) includes a prescription drug plan offered under part D of title XVIII of the Social Security Act and a Medicare Advantage plan offered under part C of such title.

(B) HEALTH INSURANCE COVERAGE; HEALTH INSURANCE ISSUER- The terms `health insurance coverage' and `health insurance issuer' have the meanings given such terms under paragraphs (1) and (2), respectively, of section 733(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(b)).

(C) GROUP HEALTH PLAN- The term `group health plan' has the meaning given that term in section 733(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(a)(1)).

(3) INDEPENDENT PHARMACY- The term `independent pharmacy' means a pharmacy that has a market share of--

(A) less than 10 percent in any PDP region; and

(B) less than 1 percent in the United States.

For purposes of the preceding sentence, all pharmacies that are members of the same controlled group of corporations (within the meaning of section 267(f) of the Internal Revenue Code of 1986) and all pharmacies under common control (within the meaning of section 52(b) of such Code but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 pharmacy.

(4) PDP REGION- The term `PDP region' has the meaning given such term in section 1860D-11(a)(2) of the Social Security Act (42 U.S.C. 1395w-111(a)(2)).

(j) 5-Year Sunset- The exemption provided in subsection (a) shall only apply to conduct occurring during the 5-year period beginning on the date of the enactment of this Act and shall continue to apply for 1 year after the end of such period to contracts entered into before the end of such period.

(k) General Accountability Office Study and Report- The Comptroller General of the United States shall conduct a study on the impact of enactment of this section during the 6-month period beginning with the 5th year of the 5-year period described in subsection (j). Not later than the end of such 6-month period, the Comptroller General shall submit to Congress a report on such study and shall include in the report such recommendations on the extension of this section (and changes that should be made in making such extension) as the Comptroller General deems appropriate.

(l) Oversight- Nothing in this section shall preclude the Federal Trade Commission or the

Department of Justice from overseeing the conduct of independent pharmacies covered under this section.

